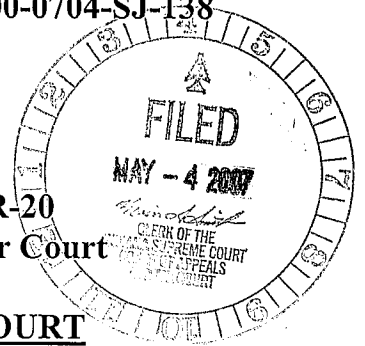


**In the
Indiana Supreme Court**

IN RE THE MARRIAGE OF)	Supreme Court No. 47S00-0704-SJ-138
)	
DAVID L. KENNEDY)	
)	
and)	
)	Case No. 47D01-0101-DR-20
BRENDA ANN KENNEDY)	in the Lawrence Superior Court



ORDER REMANDING JURISDICTION TO TRIAL COURT

Comes now the Clerk of the Lawrence Superior Court, and pursuant to Ind.Trial Rule 53.2, certifies this matter here for the appointment of a special judge.

And this Court, being duly advised, now finds that jurisdiction of this matter should be remanded to the Lawrence Superior Court and Special Judge David L. Welch. The Chronological Case Summary reveals that this matter has been under advisement since March 3, 2006. On October 17, 2006, respondent filed a motion to submit additional evidence. Only after this motion was denied, on January 12, 2007, did respondent seek to have the submission of the matter withdrawn from Special Judge Welch.

... [T]he benefit of Trial Rules 53.1 or 53.2 may be waived where the deadline for a ruling has passed, but rather than filing a praecipe to withdraw the cause, a party files pleadings or otherwise takes voluntary action of record inconsistent with that party's right to invoke those rules. See generally *Board of Medical Registration v. Turner*, 241 Ind. 73, 77-78, 168 N.E.2d 193, 195 (1960)(applying a predecessor rule)."

State ex rel. Kathy Koppe, Relator, v. Cass Circuit Court, 723 N.E.2d 866 (Ind. 2000). By seeking to file additional evidence rather than seeking withdrawal of the submission, respondent acted inconsistently with her rights under Ind. Trial Rule 53.2, and therefore waived those rights.

IT IS, THEREFORE, ORDERED that jurisdiction of this matter is remanded to the Lawrence Superior Court and Special Judge Welch.

The Clerk of this Court is directed to forward notice of this Order to the Hon. David L. Welch, Monroe Circuit Court, Div. 7, 301 North College Avenue, Bloomington, IN 47404-3865, and to the Clerk of the Lawrence Superior Court.

The Clerk of the Lawrence Superior Court is directed to forward notice of this Order to all parties of record in the case below.

DONE at Indianapolis, Indiana, this 4th day of May, 2007.

RT Shepard
Randall T. Shepard
Chief Justice of Indiana